

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
FILED

APR 25 2025

DANTE A. WILSON,
Plaintiff,

Nathan Ochsner, Clerk of Court

v.

CIVIL ACTION NO. 4:25-cv-01595

PORTFOLIO RECOVERY ASSOCIATES, LLC,
Defendant.

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ATTORNEY AS BOTH
ADVOCATE AND WITNESS**

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Dante A. Wilson ("Plaintiff"), and files this Motion to Strike Defendant's counsel from continuing to act as both advocate and witness in this proceeding. Plaintiff respectfully shows the Court as follows:

I. LEGAL STANDARD

1. Under Rule 3.08(a) of the Texas Disciplinary Rules of Professional Conduct, incorporated through Local Rule 83.1 of the Southern District of Texas, an attorney shall not accept or continue employment in a matter if the attorney knows or reasonably should know they are likely to be a necessary witness.
2. Courts have consistently held that when counsel is a necessary witness in a proceeding, disqualification is appropriate to prevent unfair prejudice and uphold ethical standards. See *Anderson Producing Inc. v. Koch Oil Co.*, 929 S.W.2d 416, 423 (Tex. 1996).
3. Federal Rule of Evidence 602 provides that a witness may not testify unless evidence supports a finding that the witness has personal knowledge of the matter. Counsel cannot rely on hearsay or unauthenticated records in pleadings without subjecting themselves to being witnesses.

4. In *In re Sanders*, 153 S.W.3d 54, 57 (Tex. 2004), the Texas Supreme Court held that disqualification may be appropriate when an attorney's testimony is both necessary and prejudicial to the opposing party.

II. ARGUMENT

5. In the instant case, Defendant's attorneys have submitted exhibits, including billing records and statements, which purport to establish key facts in dispute—namely, the existence, amount, and ownership of the alleged debt.
6. Plaintiff contends that these documents require foundation and authentication that can only be established through first-hand knowledge. As Defendant's counsel lacks personal knowledge of the transactions, their attempt to introduce such records positions them as necessary witnesses under Rule 602.
7. Defendant's counsel is not the original creditor, not the custodian of records, and has no personal knowledge of the original account. Nonetheless, counsel attempts to substantiate the claims in this matter through unsworn statements and unauthenticated documents.
8. By submitting such evidence and potentially needing to testify to authenticate or explain its contents, Defendant's counsel becomes a material witness in this case.
9. Continued representation by counsel under these circumstances presents a clear conflict of interest, undermines the adversarial process, and may unfairly prejudice the Plaintiff. The dual role of advocate and witness is impermissible and warrants disqualification.

III. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this Honorable Court:

1. GRANT Plaintiff's Motion to Strike and disqualify Defendant's counsel from serving as both advocate and witness in this case;
2. BAR Defendant's counsel from submitting evidence that requires their own testimony to authenticate; and
3. Grant all such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Date: April 19, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dante A. Wilson', is written over a horizontal line.

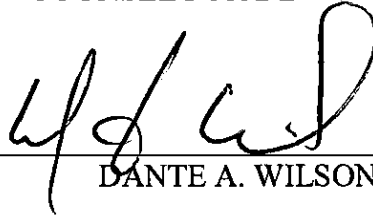
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded via certified mail to the court and all parties entitled to notice of the same on this 19th day of April, 2024.

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